

SERVICE DATE – AUGUST 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 682X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN GREENBRIER  
AND FAYETTE COUNTIES, WV

Decided: August 28, 2008

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 16.7-mile line of railroad on CSXT's Southern Region, Huntington-East Division, Sewell Subdivision, between milepost CAF 27, near Rainelle, and milepost CAF 43.7, near Nallen, in Greenbrier and Fayette Counties, WV. Notice of the exemption was served and published in the Federal Register on April 3, 2008 (73 FR 18322-23). The exemption was scheduled to become effective on May 3, 2008, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by April 14, 2008.

On April 1, 2008, Seaside Holdings, Inc. (Seaside) filed a formal expression of intent to file an OFA to purchase CSXT's line proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until May 13, 2008.<sup>1</sup> In the filing, Seaside requested that CSXT provide it with the information set forth in 49 CFR 1152.27(a), and, in addition, specific information not included in that section. On April 14, 2008, Seaside filed a request that the Board toll the time period for it to submit an OFA, until 10 days after it received the data requested from CSXT.

In a decision served on April 18, 2008 (April 18 decision), the Board tolled the time period for Seaside to file an OFA, until 10 days after CSXT notifies the Board in writing that it has provided Seaside with the information set forth in section 1152.27(a). The Board postponed the effective date of the exemption until 10 days after the due date for the filing of an OFA.

On April 18, 2008, the Greenbrier County Commission, and on April 21, 2008, the Fayette County Commission (collectively, the Counties) filed requests for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, and for a public use condition under 49 U.S.C. 10905. In a decision served on May 14, 2008 (May 14 decision), the Board held the requests for issuance of a NITU and public use condition in abeyance pending completion of the OFA process. The Board concluded that the Counties had satisfied the requirements for both a public use condition and a NITU, but noted that, because an OFA takes priority over such requests, the OFA process had to be

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<sup>1</sup> See 49 CFR 1152.27(c)(2)(i).

completed before public use and trail use conditions could be issued and become effective. The May 14 decision also indicated that, if the OFA process terminated without a sale, the Board would issue a decision and notice effective on its service date imposing interim trail use and a public use condition.

By letter filed on August 12, 2008, Seaside states that it will not be filing an OFA to acquire and operate CSXT's rail line proposed for abandonment. Accordingly, the financial assistance process prescribed in the April 18 decision will be terminated and a NITU will now be issued and a public use condition will be imposed.

No environmental or historic preservation issues have been raised by any party or identified by the Board's Section of Environmental Analysis, and, therefore, a Finding of No Significant Impact under 49 CFR 1105.10(g) will be made pursuant to 49 CFR 1011.7(b)(9). Accordingly, the abandonment authorized in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The financial assistance process in this proceeding is terminated.
3. Upon reconsideration, the notice served and published in the Federal Register on April 3, 2008, exempting the abandonment of the line described above, is subject to the condition that CSXT shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days from the effective date of this decision and notice to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use, and is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the service date of this decision and notice.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after the service date of this decision and notice (February 25, 2009), interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

8. CSXT's exemption will become effective on the service date of this decision and notice, subject to the trail use and public use conditions imposed in this decision.

9. This decision and notice is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary